

# STGWG

## STATE AND TRIBAL GOVERNMENT WORKING GROUP

November 5-7, 2003

Arlington, Virginia

### MEETING HELD IN CONJUNCTION WITH U.S. DEPARTMENT OF ENERGY INTERGOVERNMENTAL GROUP MEETING

Participating Groups:

Energy Communities Alliance

Environmental Council of the States

National Association of Attorneys General

National Governors Association

STGWG

### MEETING NOTES

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**WEDNESDAY, NOVEMBER 5, 2003**

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(Q-question; A-answer; C-comment; R-response to comment)

#### TRIBAL SESSION WITH DOE OFFICIALS

##### U.S. Department of Energy Environmental Management (DOE-EM) Q & A Session

*Roger Butler, Deputy Assistant Secretary for Policy, Planning and Budget, DOE-EM*

*Sandra Waisley, Acting Director, Office of Intergovernmental and Public*

*Accountability,*

*DOE-EM*

Q: Is there DOE-HQ money for tribes?

A: Yes. Tribes are included in FY 2004 non-defense environmental activities.

Q: How does the funding amount for tribes compare to last year?

A: Nineteen percent increase over FY 2003.

C: The Change Control Board reviews all proposed budget changes, except labor costs.

- The review occurs in July/August of each year.

- Hundreds of budget line items are examined.

- R. Butler is chair of the 3-member Board.

- Board recommends new budget authority to assist Secretary.

C: Goal of EM is to utilize funds in environmental remediation and clean up sites ASAP.

- Important for all to understand how cost balances are reviewed.

- If DOE made an error, let Butler know and he will reconsider funding.

C: DOE default position: DOE can reduce budget by amount of the cost balances at year end.  
DOE assumes dollars have not been spent or obligated.

C: Tribes are concerned that DOE will see large costs balances because of late awards.

- Tribes would like 1/12 of same funding as previous year allocated monthly so that they can continue their EM programs uninterrupted.
- DOE needs to give everyone their pro rata share under the continuing resolution (CR).

C: DOE is under second CR and a third one is likely.

C: In many cases, tribal programs have to be put on hold until DOE funds are received; data collection is suspended during that time.

Q: How did Richmond, Wash. respond on 10-1-03?

A: This year the DOE facility did begin providing pro rata share to tribes on 10-1-03. This is a **new** practice.

C: Tribes need to call DOE officials if funds are not forthcoming.

Q: What is best way for tribes to communicate re cost balances to DOE, and when? Should it be to project officer or direct to Butler?

A: Tell DOE project officer in July time frame.

C: Tribal programs run on calendar year, not fiscal. Project officers try to project money to be spent.

C: The Change Control Board will try to project as well. S. Waisley has a lead role. The Control Board confers with her, so communicate with her.

C: Tribes would like to be involved in budget decisions, so that funds can be distributed equitably. DOE needs to recognize tribal authority.

Q: Accelerated cleanup is happening at Hanford, but will funding decrease over time?

- Long-term migration needs to be addressed.
- More than monitoring is necessary.

C: Homeland security funding from federal government:

- States have received millions; tribes have received no money though they have the same security issues.
- Tribes need DOE to advocate for them.

C: Accelerated cleanup means millions of dollars saved, but contaminated soil will be left in place.

C: Tribes need a voice in decisions and budget authority with DOE and other agencies.

- Continued dialogue is critical.
- Policy decisions lead to long-term consequences.
- More needs to be done to hear the tribal voice and understand tribal concerns.

C: DOE did listen and officials made the change to prorate funds for FY 2004. Funds were distributed right away under first CR in October.

## **DOE Indian Policy Implementation Plan and 2004 DOE-Tribal Summit**

*Herbert Jones, DOE Deputy Assistant Secretary for Intergovernmental and External Affairs*

*Steve Grey, DOE Director of Indian Affairs, Office of Congressional and Intergovernmental (CI) Affairs*

**H. Jones:**

- o DOE wants broad participation among tribes with DOE officials.
- o There have been prior lapses in communications between DOE and tribes.
- o There are disconnects and inefficiencies in the communication between DOE and its partners, including tribes. Jones wants that to change; he has taken on the role of ombudsman within DOE.
- o One problem was the need to fill a vacancy in the position of Director of Indian Affairs.
  - ! Steve Grey, Navajo Nation, has taken that position.
  - ! Kristen Ellis, DOE-CI, is part of the Indian Affairs team (Steve is in NM part of the time).
- o Tribal Summit: "We need to commit to finding ways to resolve issues in a constructive dialogue with a view to moving forward."
  - ! DOE will solicit your input over the fall and winter months.
  - ! "Listening sessions" will occur over the winter months.
- o Focal points of the Summit:
  - ! Define terms used in policies;
  - ! Set expectations for moving forward;
  - ! Identify routine problem areas and seek improvement;
  - ! Discuss future summits: Should that include, e.g., regional summits?
- o Interaction with Intergovernmental staff: Contact the CI staff so they can coordinate internally. "Effective and efficient" communication is the CI goal.

**S. Grey:**

- o DOE is making progress and is committed to the Tribal Summit; the DOE intergovernmental team is a good one.
- o CI welcomes your communication and input and will provide liaison services to our programs. There are 50 points of contact (POCs) on tribal issues within DOE.

Q: The Navajo Nation has two colleges; what about the 10 tribes represented on STGWG? How can tribal college funding be shared equitably?

A: The Tribal College Executive Order addressed the issue of how to distribute resources. The Office of Science, e.g., works with tribal colleges on science. Tribes should communicate directly w/ S. Grey on their tribal college interests.

C: Tribes will look to S. Grey and his office for answers to budget questions and the request for a greater tribal voice in DOE policy and decisions.

C: S. Grey is invited to visit the Umatilla Reservation Tribes at Hanford.

C: S. Grey also invited to visit the Santa Clara Pueblo to learn more about their needs; funding levels are low in light of new objectives.

C: Tribes ask that S. Grey reach out to them in general and visit all the DOE-affected tribes to better understand the challenges each face.  
R: The Secretary has visited Los Alamos, and H. Jones will visit New Mexico in late November.

C: DOE invites more communication from the tribes. "Keep us informed so that we can share with DOE program staff."

C: Tribes feel it is essential that the Secretary attend the Summit; must have leaders on both sides there.  
R: CI agrees; Summit should include the Secretary. H. Jones department officials will definitely attend.

C: The Implementation Plan is critical to the DOE Indian Policy. There has been no action since discussion at the March STGWWG meeting; it needs to be reactivated.  
R: H. Jones would like to hear more from tribes about the Plan. The Summit could be used for implementation development—to set expectations for and discuss approaches for finalizing the Plan.

C: Tribes have heard nothing about the DOE Implementation Plan working group since it was announced at the March 2003 STGWWG meeting.

C: Timetables in the Indian Policy are not being met; the Policy provides clear direction for implementation.  
R: The Summit is a beginning and an opportunity for continued dialogue. This meeting **is** progress. DOE needs your continued commitment to make the Summit successful.

C: STGWWG tribes want to be included in planning the Summit.  
R: Contact H. Jones and S. Grey in the CI office ([herb.jones@hq.doe.gov](mailto:herb.jones@hq.doe.gov), 202-586-4220; [steven.grey@hq.doe.gov](mailto:steven.grey@hq.doe.gov), 202-586-5377). They want to be involved with the STGWWG tribes on the Summit.  
- Check DOE-CI website for updates as well (<http://www.ci.doe.gov/cita2.htm>).  
- Kristen Ellis is the RSVP contact for the Summit: [kristen.ellis@hq.doe.gov](mailto:kristen.ellis@hq.doe.gov), 202-586-5810.

End of Tribal Session with DOE.

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## **WEDNESDAY, NOVEMBER 5, 2003 cont'd**

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### **STGWWG Executive Session**

#### **Welcome, Invocation, Introductions**

*Armand Minthorn, Confederated Tribes of the Umatilla Indian Reservation, Co-Convenor*

*Tom Winston, Ohio, Co-Convenor*

#### **Report out from Tribal Executive Session 11/4 and Tribal Session with DOE Officials 11/5**

*Peter Chestnut, Pueblo of San Ildefonso, Tribal Issues Committee Co-Chair*

#### **o Leading issues/concerns:**

- ! Inaction on Implementation Plan for DOE American Indian Policy.
- ! Accelerated cleanup at Hanford.
- ! What impact will accelerated cleanup have on all sites?

! Desire to have DOE clean up to natural state.  
! Develop STGWWG response to DOE extension on level of cleanup—"natural attenuation."  
! Tribal science project—sharing information among tribes; develop joint research plans and share data collected.  
! DOE-Tribal Summit planned in conjunction with NCAI conference in 2004: DOE has been urged to involve STGWWG tribes in planning.  
! Concern that DOE funding to tribes continue after accelerated cleanup.  
! Session with DOE officials was more of a monologue than a dialogue.  
! Concern that DOE will try to truncate its long-term commitment to tribes (2033 now the proposed end date); this needs to be addressed specifically and directly with DOE.  
! What is the plan for long-term stewardship by DOE? The Department needs to provide assurances that land and water are safe—legacy issues.  
! DOE is not implementing the American Indian Policy  
! Tribes have been cut out of budget discussions and decisions.  
! STGWWG is an essential group and voice for tribal interests.  
! Native people are the most at-risk population in relation to contaminants in the Columbia River; EPA study reports a 1:50 health risk ratio for native people consuming Columbia River fish, much greater than risk to the general population.  
! Need acknowledgment of risk by DOE and then risk must be factored into accelerated cleanup.  
! Water contamination at Hanford: 1:10 risk ratio to native people who ingest water.  
! Concern about future generations—what will impact be?  
! Other studies on risk assessment need to be funded.  
! Need to enter government-to-government agreements; DOE must acknowledge risk and provide funding to support risk assessment.

**Action Item:** D. Griffin will distribute EPA fish toxicity study to full STGWWG.

C: STGWWG should perhaps drop term "implementation" or become clear on what it means, i.e., a common definition.

C: Much concern that the DOE Risk-Based End States (RBES) Implementation Plan was in pre-decisional draft form before STGWWG learned it was underway.

R: This was an inadvertent oversight by the groups taking the lead in the revcom process. STGWWG **will** be included in revcom of future DOE docs.

C: Transition of sites from EM to Science, NNSA, etc.—members need to understand implications.

C: RBES Guidance and other related documents are available on DOE web site:

[http://www.em.doe.gov/doi/em/cda/channel\\_front\\_door/0,2116,14763\\_16902,00.html](http://www.em.doe.gov/doi/em/cda/channel_front_door/0,2116,14763_16902,00.html).

(If link fails, go to EM home page, <http://www.em.doe.gov>, click on Hot Topics, then click on Risk-Based End State Cleanup Project.)

C: Equity issues should be mentioned in the letter; Hanford site data needs to be shared.

### **STGWWG Position on High-Level Waste Definition**

C: Federal government is reconsidering definition of high-level radioactive waste. May not be health-based; likely to reduce what qualifies.

Q: Should this be a core issue for STGWG? It's a complex but important issue.

A: Need letter to Congress, which may consider in 2004.

- Senator Domenici will not let it occur this year, but it may resurface as an appropriations issue.

C: Redefinition a potentially major impact on some STGWG members; must be an **open process**.

C: State of South Carolina very concerned about reclassification; also advocates an open process by DOE, not congressional appropriation.

C: Recommendation: STGWG recognizes that DOE is going forward with plans for reclassification; STGWG supports an open and public process.

C: Separate out "process" from technical definition.

**Action Item:** Send letter to Congress advocating an open, public process.

C: Re "Special Case" Waste: Look at problem holistically and consider other dangerous waste definitions.

C: DOE is seeking relief from existing federal law (Federal Waste Policy Act).

End of STGWG Executive Session.

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**Joint sessions with other intergovernmental groups:  
Luncheon on Wed. 11/5 through Thurs. 11/6, ending at 2:30 pm.  
Tribes then met from 3:00 to 5:00 pm; session was not facilitated.**

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**FRIDAY, NOVEMBER 7, 2003**

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**STGWG OPEN SESSION**

**Welcome and Announcements**

*Armand Minthorn, Confederated Tribes of the Umatilla Indian Reservation, Co-Convenor*

*Tom Winston, State of Ohio, Co-Convenor*

o Steve Tarlton is no longer Colorado representative to STGWG due to promotion at the Colorado Department of Public Health and Environment. Steve's long-time participation and many contributions were acknowledged.

- o The letter to DOE on Risk-Based End States Implementation Plan should go out by end of November.

**Action Item:** Peter Chestnut will draft RBES letter for co-convenors' signatures.

### **Value of Joint Meeting with other Intergovernmental Groups**

#### Pluses:

- o Meeting in DC **and** with other groups: greater level of DOE involvement (NNSA, Science, etc).
- o Greater understanding of issues and perspectives of other groups.
- o Enhanced STGWG's ability to communicate with DOE.
- o Was good to establish relations with other intergovernmental groups with similar concerns.

#### Minuses:

- o Tribes were disappointed with DOE participation in tribal sessions: unable to meet with the Secretary or Under Secretary Kyle McSlarrow. Met only briefly with the Director of Indian Affairs.
- o Tribes did not get all their questions answered. Planning effort did not seem to yield commensurate results.
- o States share tribal disappointment that DOE did not engage more with the tribes this week and support an ongoing dialogue.

#### Other

- o One suggestion for future joint meeting is to focus in-depth on specific topics—LTS, e.g.—in breakout groups rather than many topics in joint sessions.

C: We will continue to improve communication and information-sharing among intergovernmental groups and DOE. Kara Colton, NGA, will send updates to Denise Griffin, NCSL, for dissemination to STGWG.

### **Tribal Issues**

*Peter Chestnut, Pueblo of San Ildefonso; Willie Preacher, Shoshone-Bannock Tribes — Tribal Issues Committee Co-Chairs*

- o Afternoon session on 11/6 had no DOE officials present; they may have been called to the Hill for budget reasons.

- o Tribal Issues (TI) Committee will send a STGWG letter to the Secretary and DAS Herb Jones on:

- ! STGWG role in upcoming Tribal Summit (Feb. 2004)—tribes want active role;
- ! Implementation Plan for the Indian Policy: needs to be restarted;
- ! Disappointment over short amount of time with the Director of Indian Affairs;
- ! Long-term stewardship;
- ! Contracting with tribes.

- o Committee will also send Tribal Issues letter to Director of Indian Affairs Steve Grey expressing concerns.

o Tribes and TI Committee concerned that the Summit be useful. Takes place barely three months from now and STGWWG has only just heard about it, despite repeated offers to help in the planning.

C: It was suggested in Wednesday's tribal session with DOE that STGWWG take the lead on organizing the summit because STGWWG tribes have direct involvement with DOE facilities. Herb Jones disagreed, felt it should be all the tribes.

C: Important that letters have timeframes laid out so STGWWG gets involved in the Summit without delay.

C: The importance of Steve Grey's presence at STGWWG meetings was again emphasized; tribes want to engage with him to a greater degree.

C: Letter to Secretary and S. Grey should be specific and include issues/themes for the Summit; emphasize importance of Director of Indian Affairs attending STGWWG meetings.

C: Concern that facility-affected tribes will be outnumbered by WIPP tribes at Summit: how should this be handled?

R: Regional summits in the future might address this. For now, stay focused on the main topics to maximize chance of response, results.

C: States try to have positive government-to-government relationships with tribes and DOE should also.

C: Important not to alienate other tribes at Summit—there are broader DOE issues as well.

C: The next NCAI conference is Nov. 16-21, 2003 in New Mexico. Details on Summit planning should be forthcoming. (Good issue for future: focus on WIPP vs. facility-affected tribes.)

**Action Item:** D. Griffin send list of DOE tribal POCs to tribes.

**Action Item:** D. Griffin send DOE reorganization chart to the group.

### **Long-Term Stewardship (LTS)**

*Neil Weber, Pueblo of San Ildefonso, LTS Committee Co-Chair*

o Concern that LTS issues may get diluted in DOE reorganization. Need more clarity from DOE on role of EM and Legacy Management following cleanup.

o LTS Committee needs state co-chair.

(Post-meeting note: John Owsley, Tennessee, volunteered to co-chair the committee.)

o Budget/funding for LTS - who will have the lead role?

**Action Item:** LTS co-chairs will draft letter to Jessie Roberson (EM) and Mike Owen (LM) on above issues.

### **Redefining of Waste Categories**

o Congressional action has been requested by DOE.

o A topic for LTS committee and/or I&D committee.

C: Tracking of RBES process: once implemented by DOE, how will DOE do this? Will be a big task.

C: Missouri cannot continue on STGWG committees for now—very limited DOE funds since cleanup is done. Will try to stay involved in meetings.

C: We need to be concerned about DOE's actions in Missouri—are they precedent setting? Should DOE be able to disconnect after cleanup?

C: What will the role of states be once a facility is either closed or cleaned up? Ohio, Colorado and Missouri are pilot sites—need to track, document what happens there.

C: The next NCAI conference is Nov. 16-21, 2003 in New Mexico. Details on Summit planning should be forthcoming. (Good issue for future: focus on WIPP vs. facility-affected tribes.)

C: Hanford Reservation is the most contaminated site in the nation, especially groundwater. LTS will be a key issue. DOE must stay involved, be accountable. Missouri is the 'footprint' on DOE's approach to LTS.

C: Tenn. supports funding for Missouri—state needs money for monitoring and states should have oversight responsibility on monitoring.

C: NGA supports DOE long-term funding obligations.

C: Co-convenors will confer with Missouri further to learn more and understand better what is transpiring there. Institutional control issues are also important, not just funding.

### **Transportation Issues**

*Max Power, Washington State*

- o Ken Niles, Transportation Committee co-chair, was unable to attend the meeting.
- o Max attended as STGWG representative to the Transportation External Coordination (TEC) meeting in July 2003.

### **Summary of TEC Meeting**

- ! Best practices focus.
- ! Increase in nuclear waste and transport of it in near future.
- ! Security post-9/11: 'need to know' vs. terrorism concerns. Many issues to sort out, but current practices are considered ok for now.
- ! Train transport likely to increase.
- ! Question in DOE reorganization: where will Transportation reside? Who will be the contact?

**Action Item:** D. Griffin will disseminate tribal transportation resources that Judith Holm has posted on the DOE web site. (Web address: [http://www.ntp.doe.gov/tribal\\_booklet803.pdf](http://www.ntp.doe.gov/tribal_booklet803.pdf).)

### **DOE Transportation Office**

*Kent Hancock, Director, DOE Office of Transportation, Office of Integration and Disposition, Office of Environmental Management*

- o Reorganization will be completed by end of November
  - ! Function-based approach

- ! 30-day transition period
  - ! Will be a great deal of staff turnover:
    - Patty Bubar will move and report to chief operations officer;
    - Alice Williams will move to deputy level: transportation function will be under her.
  - o Two approaches for reaching stakeholders:
    - ! Regional approach: Western Governors Assoc., NCSL, NGA (December 2003 meeting in Chicago - Midwest and Northeast)
    - ! External Working Group: Feb 2004 meeting; Judith Holm is the staff contact for the meeting: [jholm@doeal.gov](mailto:jholm@doeal.gov).
  - o Transportation has been back burner issue; has taken cuts in budget.
  - o Security Issues:
    - ! DOE issued policy after 9/11: must have approval of deputy assistant secretary for all shipments of nuclear waste. DOE knows about all shipments; they must be certified for security protocols.
    - ! EM is concluding its shipments of spent nuclear fuel in 2004; no future transportation expected.
    - ! NRC and DOE are working on development of Security Protection Plan for transportation of spent nuclear fuel.
  - o Train Transportation Issues:
    - ! Low-level waste on rail.
    - ! WIPP is discussing shipments by rail.
    - ! Need transportation plan for rail from DOE sites to NM before it occurs.
    - ! All stakeholders will be heard before implementation.
    - ! Protocols are in development.
- Q: Do you expect a rail protocol to be issued?  
 A: WGA plan and DOE plan will both be out in Dec. 2003, but early 2006 before it would be implemented. Needs to be vetted with all stakeholders.
- Q: Where do you see shipments from Savannah River and other sites going in the future?  
 A: Office of Nuclear Energy might be transferred to RW.
- Q: Where are the success stories in use of rail to transport?  
 A: West Valley to Idaho; Ohio to Savannah River.
  - Lessons learned document currently being written by DOE; will be forthcoming soon.
  - Navy spent fuel program: also has experiences to share.
- o Other issues:
    - ! Inspections by feds vs. state officials.
    - ! Use of cell phones for communicating, but is it secure? Coded communication in the future.
    - ! Rail findings document from TEC group—forthcoming in December.
- Q: Shipment agreement with Idaho tribes in 1995: prior to agreement, tribes stopped shipments. How would that be dealt with today?  
 A: Federal marshals and heavy armor now.
  - Notification is the key.

- Draft proposal for MOU between Idaho, DOE and tribes is in development.

### **Integration and Disposition (I&D) Issues**

*Keith Collinsworth, South Carolina*

- o DOE's reclassification of waste discussed in Wednesday's executive session:
  - ! Broader than high level waste.
  - ! Priority for I&D Committee in 2004.
- o STGWWG letter:
  - ! If reclassification is going to happen, then need to urge an open, public process.
  - ! Timely to weigh in.
  - ! I&D Committee will draft letter (include Brian Hembacher, Mike Wilson, Bob Alvarez-Yakama Nation); review by full STGWWG.
  - ! Letter to be finalized before Spring 2004 congressional session.
- o TRU Waste—hub concept:
  - ! Follow this development.
  - ! No schedule; ask DOE directly for updates.
  - ! NGA has a lead role.
- o Follow-up needed:
  - ! Need point of contact for I&D in DOE—follow up with EM.
  - ! Contact Alice Williams for new dialogue on Missouri.
  - ! Should I&D and Transportation Committees be combined? Mike Wilson and Max Power will take the lead.

End of STGWWG Open Session.

### **Date of next STGWWG meeting**

Post-meeting note: The intergovernmental planning group agreed that, though there may be future joint meetings, the groups would like to hold separate meetings in the spring of 2004. The STGWWG meeting will likely take place later in the spring, due to the lateness of the fall meeting and the DOE-Tribal Summit scheduled for late February 2004. Per discussion at the meeting, the Executive Committee will hold a conference call in January to set the date and location. Members are encouraged to share their date and location preferences; email Denise Griffin at [denise.griffin@ncsl.org](mailto:denise.griffin@ncsl.org).